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Nos. 05-908, 05-915

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In The

Supreme Court of the United States

PARENTS INVOLVED IN COMMUNITY SCHOOLS,

Petitioner,

v.

SEATTLE SCHOOL DISTRICT NO. 1, ET AL.,

Respondents.

CRYSTAL D. MEREDITH, Custodial Parent and Next Friend of Joshua Ryan McDonald,

Petitioner,

v.

JEFFERSON COUNTY BOARD OF EDUCATION, ET AL.,

Respondents.

On Writs Of Certiorari To The United States Courts Of Appeals For The Ninth And Sixth Circuits

BRIEF OF 19 FORMER CHANCELLORS OF THE UNIVERSITY OF CALIFORNIA AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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Avila v. Berkeley Unified Sch. Dist., No. RG03-110397, 2004 WL 793295 (Cal. Super. Ct. Apr. 6, 2004) 3, 14, 15

Brown v. Bd. of Educ., 347 U.S. 483 (1954) 7, 17

Choi v. Gaston, 220 F.3d 1010 (9th Cir. 2000) 4

Crawford v. Bd. of Educ., 551 P.2d 28 (Cal. 1976) 3

Crawford v. Huntington Beach Union High Sch. Dist., 98 Cal. App. 4th 1275 (2002) 3

Diaz v. San Jose Unified Sch. Dist., 733 F.2d 660 (9th Cir. 1984) 7

Edmonson v. Leesville Concrete Co., 500 U.S. 614 (1991) 7

Georgia v. Ashcroft, 539 U.S. 461 (2003) 6, 10

Grutter v. Bollinger, 539 U.S. 306 (2003) 5, 7, 17, 18

Johnson v. California, 543 U.S. 499 (2005) 4

Kang v. U. Lim Am., Inc., 296 F.3d 810 (9th Cir. 2002) 4

Lopez v. Monterey County, 525 U.S. 266 (1999) 4

McCollum v. Bd. of Educ., 333 U.S. 203 (1948) 7

McGinest v. GTE Serv. Corp., 360 F.3d 1103 (9th Cir. 2004) 4

Miller v. Johnson, 515 U.S. 900 (1995) 6

TABLE OF AUTHORITIES – Continued

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Palmore v. Sidoti, 466 U.S. 429 (1984) 6

Parents Involved in Cmty. Schs. v. Seattle Sch. Dist., No. 1, 426 F.3d 1162 (9th Cir. 2005) (en banc) 6

People v. Durazo, 124 Cal. App. 4th 728 (2004) 4

Romer v. Evans, 517 U.S. 620 (1996) 6

San Francisco NAACP v. San Francisco Unified Sch. Dist., 413 F. Supp. 2d 1051 (N.D. Cal. 2005) ... 11, 12

Spangler v. Pasadena City Bd. of Educ., 311 F. Supp. 501 (C.D. Cal. 1970) 7

United States v. Carolene Prods. Co., 304 U.S. 144 (1938) 6

Ward v. Flood, 48 Cal. 36 (1874) 7

Westminster Sch. Dist. v. Mendez, 161 F.2d 774 (9th Cir. 1947) 7

Wong Him v. Callahan, 119 F. 381 (N.D. Cal. 1903) 7

CONSTITUTIONAL AND STATUTORY PROVISIONS

Cal. Const. art. I, § 7(a) 3

Cal. Const. art. I, § 31 ..... 2, 18

Cal. Educ. Code § 35160.5(b)(2)(A) 11

An Act to Create and Organize the University of California, ch. 244, 1868 Cal. Stat. 251 19

The Education Reform (Northern Ireland) Order, 1989, SI 1989/2406 (N. Ir. 20), pt. VI 15

TABLE OF AUTHORITIES – Continued

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OTHER AUTHORITIES

Berkeley Unified School District, BUSD Student Assignment Plan/Policy, http://www.berkeley.k12.ca.us/student_assign.html 14

Aharon Bizman & Yehuda Amir, *Integration and Attitudes, in* SCHOOL DESEGREGATION: CROSS-CULTURAL PERSPECTIVES 155 (Yehuda Amir & Shlomo Sharan eds., 1984) 16, 17

Jomills Henry Braddock II, *The Perpetuation of Segregation Across Levels of Education: A Behavioral Assessment of the Contact-Hypothesis*, 53 SOC. EDUC. 78 (1980) 23, 24

Brief for Petitioner, *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978) (No. 76-811) 5

Brief of *Amicus Curiae* Pacific Legal Foundation, *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, No. 05-908 (U.S. Aug. 21, 2006) 18

Charles S. Bullock III, *Contact Theory and Racial Tolerance Among High School Students*, 86 SCH. REV. 187 (1978) 8

California Department of Education, California Basic Educational Data System, Enrollment by Ethnic Group and School 2004-05, http://www.cde.ca.gov/ds/sd/cb/filesethsch.asp 10

California Department of Education, DataQuest, http://data1.cde.ca.gov/dataquest/ ..... *passim*

CALIFORNIA POSTSECONDARY EDUCATION COMMISSION, UNIVERSITY ELIGIBILITY STUDY FOR THE CLASS OF 2003 (2004) 20

TABLE OF AUTHORITIES – Continued

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STEPHEN CARROLL ET AL., RAND, THE DISTRIBUTION OF TEACHERS AMONG CALIFORNIA'S SCHOOL DISTRICTS AND SCHOOLS (2000) 26

Robert L. Crain, *School Integration and the Academic Achievement of Negroes*, 44 SOC. EDUC. 1 (1971) 28

Marvin P. Dawkins et al., *Why Desegregate? The Effect of School Desegregation on Adult Occupational Desegregation of African Americans, Whites, and Hispanics*, 31 INT'L J. CONTEMP. SOC. 273 (1994) 9

Marvin P. Dawkins & Jomills Henry Braddock II, *The Continuing Significance of Desegregation: School Racial Composition and African American Inclusion in American Society*, 63 J. NEGRO EDUC. 394 (1994) 8

Department of Education of Northern Ireland, Integrated Schools, http://www.deni.gov.uk/index/85-schools/10-types_of_school-nischools_pg/16-schools-integratedschools_pg.htm 16

Seamus Dunn, *Integrated Schools in Northern Ireland*, 15 OXFORD REV. EDUC. 121 (1989) 15

Susanne E. Dutton et al., *Racial Identity of Children in Integrated, Predominantly White, and Black Schools*, 138 J. SOC. PSYCHOL. 41 (1998) 8

Christopher Ellison & Daniel A. Powers, *The Contact Hypothesis and Racial Attitudes Among Black Americans*, 75 SOC. SCI. Q. 385 (1994) 7

CAMILLE E. ESCH ET AL., TEACHING AND CALIFORNIA'S FUTURE: THE STATUS OF THE TEACHING PROFESSION 2005 (2005) 24, 26

TABLE OF AUTHORITIES – Continued

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CYNTHIA ESTLUND, WORKING TOGETHER: HOW WORKPLACE BONDS STRENGTHEN A DIVERSE DEMOCRACY (2003) 9

TONY GALLAGHER ET AL., INTEGRATED EDUCATION IN NORTHERN IRELAND: PARTICIPATION, PROFILE AND PERFORMANCE (2003) 16

Patricia Gurin et al., *Diversity and Higher Education: Theory and Impact on Educational Outcomes*, 72 HARV. EDUC. REV. 330 (2002) 9

Eric A. Hanushek et al., New Evidence About *Brown v. Board of Education*: The Complex Effects of School Racial Composition on Achievement (Oct. 2004), *available at* http://edpro.stanford.edu/hanushek/admin/pages/files/uploads/race.pdf 24

Eric A. Hanushek et al., *Why Public Schools Lose Teachers*, 39 J. HUM. RESOURCES 326 (2004) 26, 27

Clive Harber, *Desegregation, Racial Conflict and Education for Democracy in the New South Africa: A Case Study of Institutional Change*, 44 INT'L REV. EDUC. 569 (1998) 17

HARVARD CIVIL RIGHTS PROJECT, CONFRONTING THE GRADUATION RATE CRISIS IN CALIFORNIA (2005) 20

Institute for College Access and Success, Economic Diversity of Colleges Comparison Tool, http://www.economicdiversity.org/tool.php 19

COLIN IRWIN, EDUCATION AND THE DEVELOPMENT OF SOCIAL INTEGRATION IN DIVIDED SOCIETIES (1991) 16

Mary R. Jackman & Marie Crane, "*Some of my best friends are black . . . ": Interracial Friendship and Whites' Racial Attitudes*, 50 PUB. OPINION Q. 459 (1986) 7, 8

TABLE OF AUTHORITIES – Continued

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Linda Jacobson, *Teacher-Pay Incentives Popular But Unproven*, EDUC. WK., Sept. 27, 2006, at 1 27

Hans P. Johnson, *A State of Diversity: Demographic Trends in California's Regions*, CAL. COUNTS: POPULATION TRENDS & PROFILES, May 2002, at 1 4

JOINT COMMITTEE FOR REVIEW OF MASTER PLAN FOR HIGHER EDUCATION, CALIFORNIA LEGISLATURE, CALIFORNIA FACES ... CALIFORNIA'S FUTURE: EDUCATION FOR CITIZENSHIP IN A MULTICULTURAL DEMOCRACY (1989) 5

Jaana Juvonen et al., *Ethnic Diversity and Perceptions of Safety in Urban Middle Schools*, 17 PSYCHOL. SCI. 393 (2006) 28

John F. Kain & Daniel M. O'Brien, Black Suburbanization in Texas Metropolitan Areas and Its Impact on Student Achievement (Mar. 2000), *available at* http://www.utdallas.edu/research/tsp/pdfpapers/paper15.pdf 24

Julie E. Kaufman & James E. Rosenbaum, *The Education and Employment of Low-Income Black Youth in White Suburbs*, 14 EDUC. EVAL. & POL'Y ANALYSIS 229 (1992) 23, 28

Michal Kurlaender & John T. Yun, *Fifty Years After Brown: New Evidence of the Impact of School Racial Composition on Student Outcomes*, 6 INT'L J. EDUC. POL'Y, RES. & PRACTICE 51 (2005) 9

Susanna Loeb et al., *How Teaching Conditions Predict Teacher Turnover in California Schools*, 80(3) PEABODY J. EDUC. 44 (2005) 26

John R. Logan et al., *Segregation of Minorities in the Metropolis*, 41 DEMOGRAPHY 1 (2004) 13

TABLE OF AUTHORITIES – Continued

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Isaac Martin et al., *High School Segregation and Access to the University of California*, 19 EDUC. POL'Y 308 (2005) 22

Isaac Martin et al., *Unequal Opportunity: Student Access to the University of California*, *in* UNIVERSITY OF CALIFORNIA INSTITUTE FOR LABOR AND EMPLOYMENT, THE STATE OF CALIFORNIA LABOR, 2003 (2003) 23

DOUGLAS S. MASSEY ET AL., THE SOURCE OF THE RIVER: THE SOCIAL ORIGINS OF FRESHMEN AT AMERICA'S SELECTIVE COLLEGES AND UNIVERSITIES (2003) 9, 23, 29

Douglas S. Massey & Mary J. Fischer, *The Geography of Inequality in the United States, 1950-2000*, *in* BROOKINGS-WHARTON PAPERS ON URBAN AFFAIRS 1 (2003) 13

Carol McClenahan et al., *Intergroup Friendships: Integrated and Desegregated Schools in Northern Ireland*, 136 J. SOC. PSYCHOL. 549 (1996) 16

Claire McGlynn et al., *Moving Out of Conflict: The Contribution of Integrated Schools in Northern Ireland to Identity, Attitudes, Forgiveness and Reconciliation*, 1 J. PEACE EDUC. 147 (2004) 16

JEANNIE OAKES ET AL., SEPARATE AND UNEQUAL 50 YEARS AFTER *BROWN*: CALIFORNIA'S RACIAL "OPPORTUNITY GAP" (2004) 10

GARY ORFIELD & CHUNGMEI LEE, RACIAL TRANSFORMATION AND THE CHANGING NATURE OF SEGREGATION (2006) 10, 11

ROBERT D. PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY (2000) 9

TABLE OF AUTHORITIES – Continued

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Sean F. Reardon et al., *Implications of Income-Based School Assignment Policies for Racial School Segregation*, 28 EDUC. EVAL. & POL'Y ANALYSIS 49 (2006) 13

Regents of University of California, Policy on Future Admissions, Employment, and Contracting; Resolution Rescinding SP-1 and SP-2 (2001) 19

Report No. 20 of Consent Decree Monitoring Team 2002-2003, *San Francisco NAACP v. San Francisco Unified Sch. Dist.*, No. C78-1445-WHA (N.D. Cal. July 31, 2003) 13

Steven G. Rivkin et al., *Teachers, Schools, and Academic Achievement*, 73 ECONOMETRICA 417 (2005) 26

JOHN ROGERS ET AL., CALIFORNIA EDUCATIONAL OPPORTUNITY REPORT 2006: ROADBLOCKS TO COLLEGE (2006) 27, 28

Benjamin Scafidi et al., Race, Poverty, and Teacher Mobility (2005), *available at* http://ssrn.com/abstract=902032 27

Janet Ward Schofield, *Fostering Positive Intergroup Relations in Schools*, *in* HANDBOOK OF RESEARCH ON MULTICULTURAL EDUCATION 799 (James A. Banks & Cherry A. McGee Banks eds., 2004) 8

Dirk Schubotz & Gillian Robinson, *Cross-Community Integration and Mixing: Does It Make a Difference?*, RES. UPDATE (N. Ir. Soc. & Pol. Archive), Apr. 2006 16

Richard R. Scott & James M. McPartland, *Desegregation as National Policy: Correlates of Racial Attitudes*, 19 AM. EDUC. RES. J. 397 (1982) 8

TABLE OF AUTHORITIES – Continued

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Robert E. Slavin, *Cooperative Learning: Applying Contact Theory in Desegregated Schools*, 41 J. SOC. ISSUES 45 (1985) 8

Robert Teranishi et al., *Opportunity at the Crossroads: Racial Inequality, School Segregation, and Higher Education in California*, 106 TEACHERS C. REC. 2224 (2004) 22

Robert Teranishi & Tara Parker, Social Reproduction of Inequality: The Composition of Feeder Schools to the University of California (Aug. 2006), *available at* http://www.law.berkeley.edu/centers/ewi/research/TeranishiParker2006_AERJ_v2.pdf 23

ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA (Phillips Bradley ed., Knopf 1954) (1835) 9

William T. Trent, *Outcomes of School Desegregation: Findings from Longitudinal Research*, 66 J. NEGRO EDUC. 255 (1997) 9

Jill Tucker, *City School Assignment Plan Stuck*, S.F. CHRON., Aug. 22, 2006, at B1 12

U.S. COMM'N ON CIVIL RIGHTS, RACIAL ISOLATION IN THE PUBLIC SCHOOLS (1967) 9

UNIVERSITY OF CALIFORNIA OFFICE OF THE PRESIDENT, 2006-07 BUDGET FOR CURRENT OPERATIONS (2005), *available at* http://budget.ucop.edu/rbudget/200607/200607budgetforcurrentoperations.pdf 29

Amy Stuart Wells & Robert L. Crain, *Perpetuation Theory and the Long-Term Effects of School Desegregation*, 64 REV. EDUC. RES. 531 (1994) 8, 28

AMY STUART WELLS & ROBERT L. CRAIN, STEPPING OVER THE COLOR LINE: AFRICAN-AMERICAN STUDENTS IN WHITE SUBURBAN SCHOOLS (1997) 28

TABLE OF AUTHORITIES – Continued

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John T. Yun & Michal Kurlaender, *School Racial Composition and Student Educational Aspirations: A Question of Equity in a Multiracial Society*, 9 J. EDUC. STUDENTS PLACED AT RISK 143 (2004) 28

INTEREST OF *AMICI CURIAE*

Amici are nineteen former Chancellors from all ten campuses of the University of California ("University" or "UC"). *Amici* file this brief wholly in their individual capacities and not on behalf of the UC system, its administration, or its governing board.[1]

With over 150 years of collective experience at the helm of major universities, plus three times as many years as teachers and scholars in various disciplines, *Amici* speak in one voice from three perspectives in this brief. First, *Amici* are educators with professional expertise on the learning environments conducive to fostering high achievement and citizenship for a diverse society. Second, *Amici* are former university presidents committed to ensuring excellence and diversity in the pipeline of students entering higher education from the K-12 system. Achieving diversity of many kinds, including racial diversity, is essential to the mission of UC. Third, *Amici* are statewide leaders who were responsible for large public institutions that serve not only as premier teaching and research centers, but also as major employers, landowners, and engines of economic growth. From the day-to-day work of managing their institutions, *Amici* know that the strength of UC, the state, and the Nation depend on the stability and prosperity of our multiracial society.

SUMMARY OF ARGUMENT

Throughout our history, the Nation has absorbed a multitude of cultures and traditions while striving to unite our people in a common commitment to liberty, tolerance, and mutual respect. Nowhere is this more evident than in California, where citizens and their leaders grapple daily with the challenges presented by an increasingly multiracial society. As this Court has often said, racial prejudice

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[1] Letters of consent have been filed with the Clerk of the Court. *Amici* affirm that no counsel for any party authored this brief in whole or in part, and that no person or entity other than *Amici* made a monetary contribution to the preparation or submission of this brief.

and stereotypes distort the proper functioning of our democracy and undermine equality of opportunity. Thus the University of California, like the state and the Nation, has an immense stake in public policies that build harmony and mutual respect among our diverse citizenry.

Racially integrated public schools enhance the stability and cohesion of our democracy by exposing children of all races to cultures and perspectives different from their own. Integrated schools also increase the likelihood that young people will live and work together across racial lines as adults. The salutary effects of integrated education are confirmed by the experiences of multiethnic societies throughout the world.

Yet these vital benefits are too rarely achieved, especially in California, because our schools are, to a significant degree, racially segregated. Many districts with entrenched patterns of residential segregation cannot create integrated schools without limited consideration of race in student assignment. Given the regrettable history of efforts to use public schools as instruments of racial division and subordination, it should now be cause for approbation, not reproach, that some communities voluntarily seek to promote tolerance and equal citizenship by integrating their public schools. Accordingly, *Amici* urge this Court to uphold a simple principle with great import to California and the Nation: Local communities, applying their educational judgment through democratic means, may use race as a limited factor in school assignment to create or maintain racially integrated schools.

Moreover, as this Court recently held, it is critically important that selective universities like UC educate a racially diverse set of leaders for our pluralistic society. This compelling interest cannot be achieved – especially in California, where state law prohibits race-conscious affirmative action in university admissions[2] – without

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[2] *See* Cal. Const. art. I, § 31 ("Proposition 209"). *Amici* express no view on the applicability of Proposition 209 to voluntary K-12 integration plans. The issue is presently unsettled in light of school districts'

serious efforts to level the playing field in K-12 education for minority students. Black and Latino students are significantly underrepresented in UC compared to their statewide K-12 enrollment, and they are far less likely to be UC-eligible than white and Asian students when they graduate from high school. These disparities stem in large part from the disproportionate concentration of black and Latino students in racially isolated, inferior schools.

The educational disadvantages of attending a racially segregated school are well-documented. In particular, public schools with high black or Latino concentration have serious difficulty attracting and retaining high-quality teachers, and this problem is directly related to the racial make-up of schools *independent* of other factors such as teacher salaries, school poverty, or student achievement. The lack of high-quality teachers means that racially isolated black or Latino schools often do not have the informal networks, counseling resources, and climate of high expectations that facilitate college access. Thus it is no accident that black and Latino students who gain access to UC disproportionately come from majority-white high schools. Unless school districts have latitude to pursue effective strategies, including voluntary integration, that improve educational opportunities for black and Latino students, institutions of higher education cannot achieve their mission of educating leaders who genuinely

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concurrent obligation under California's equal protection clause to alleviate *de facto* racial segregation. *See Crawford v. Bd. of Educ.*, 551 P.2d 28, 39 (Cal. 1976); *see also* Cal. Const. art. I, § 7(a) (prohibiting court-ordered busing to remedy *de facto* segregation but providing that "[n]othing herein shall prohibit the governing board of a school district from voluntarily continuing or commencing a school integration plan"). State courts that have examined the validity of race-conscious integration plans under Proposition 209 have reached varied results. *Compare Crawford v. Huntington Beach Union High Sch. Dist.*, 98 Cal. App. 4th 1275 (2002) (invalidating high school policy barring a white student from transferring out until a white student transfers in) *with Avila v. Berkeley Unified Sch. Dist.*, No. RG03-110397, 2004 WL 793295 (Cal. Super. Ct. Apr. 6, 2004) (upholding limited use of race as one of many factors in assigning students to racially diverse schools).

reflect the increasing racial and ethnic diversity of California and the Nation.

ARGUMENT

I. RACIALLY INTEGRATED PUBLIC SCHOOLS STRENGTHEN THE FABRIC OF OUR DIVERSE DEMOCRACY BY PROMOTING TOLERANCE, COOPERATION, AND MUTUAL RESPECT.

California is the largest and most racially diverse state in the Nation. In 2004, the state's population was 12% Asian, 6% black, 35% Latino, and 45% white. "An exceptional feature of California is that ethnic diversity is not isolated to one particular city or region. With the exception of the two least populated regions in the state, every region of California is more racially and ethnically diverse than the nation as a whole."[3] This dynamic pluralism presents enormous opportunities for enriching our culture, politics, and economy. It also presents significant challenges for citizens and policymakers in combating stereotypes, promoting cooperation, and ensuring equality of opportunity.[4] For this reason, California has an immense stake in the broad availability of policy options for building "the harmony and mutual respect among all citizens that our constitutional tradition has always

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[3] Hans P. Johnson, *A State of Diversity: Demographic Trends in California's Regions*, CAL. COUNTS: POPULATION TRENDS & PROFILES, May 2002, at 1, 11.

[4] *See, e.g.*, *Johnson v. California*, 543 U.S. 499, 502-03 (2005) (racial conflict in California prisons); *Lopez v. Monterey County*, 525 U.S. 266, 274 (1999) (retrogression of Latino voting strength in Monterey County); *McGinest v. GTE Serv. Corp.*, 360 F.3d 1103, 1107-11 (9th Cir. 2004) (racially hostile workplace for blacks in Long Beach company); *Kang v. U. Lim Am., Inc.*, 296 F.3d 810, 817 (9th Cir. 2002) (racially hostile workplace for Koreans in San Diego company); *Choi v. Gaston*, 220 F.3d 1010, 1012 (9th Cir. 2000) (racial profiling of Asians by police in Anaheim); *Aguilar v. Avis Rent A Car Sys.*, 980 P.2d 846, 849-50 (1999) (racially hostile workplace for Latinos in San Francisco company); *People v. Durazo*, 124 Cal. App. 4th 728, 735-38 (2004) (racial profiling of Latinos by police in Camarillo, northwest of Los Angeles).

sought." *Grutter v. Bollinger*, 539 U.S. 306, 395 (2003) (Kennedy, J., dissenting).

The University of California has long dedicated itself to strengthening the fabric of our multiracial democracy. Through its core mission of teaching and research, UC strives to cultivate the habits of openness, inquiry, and tolerance essential to addressing the challenges presented by the state's growing diversity. In particular, the University's commitment to securing the educational benefits of a diverse student body is familiar to this Court. *See* Brief for Petitioner at 32-33, *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978) (No. 76-811).

UC is comprised of ten campuses with 209,000 students and 170,000 faculty and staff. The long-term health of this complex enterprise and its base of public support depend on the stability and prosperity of California's multiethnic society. In preparing citizens to participate in our diverse democracy, UC is part of a broader "educational system [that] liberates and sustains our capacity to live together." JOINT COMM. FOR REVIEW OF MASTER PLAN FOR HIGHER EDUC., CAL. LEGISLATURE, CALIFORNIA FACES . . . CALIFORNIA'S FUTURE: EDUCATION FOR CITIZENSHIP IN A MULTICULTURAL DEMOCRACY ii (1989). Within this system, the central institution on which UC and the state rely – not only to prepare students for higher education[5] but also "to forge a creative and productive society of mutual respect and accommodation," *id.* at 7 – is the public school.

Despite the richness of the state's diversity, too few students actually experience this diversity in public schools. As discussed below, K-12 schools throughout the state are racially segregated, depriving students of essential opportunities to develop interracial friendships, to combat stereotypes, and to learn perspectives and traditions different from their own. As Judge Kozinski observed:

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[5] *See* Part II, *infra*.

> The reality is that attitudes and patterns of interaction are developed early in life and, in a multicultural and diverse society such as ours, there is great value in developing the ability to interact successfully with individuals who are very different from oneself. It is important for the individual student, to be sure, but it is also vitally important for us as a society.

Parents Involved in Cmty. Schs. v. Seattle Sch. Dist., No. 1, 426 F.3d 1162, 1194 (9th Cir. 2005) (en banc) (Kozinski, J., concurring). *Amici* respectfully urge this Court to affirm a simple principle with great import to California and the Nation: Local communities, exercising their educational judgment through democratic means, may use race as a limited factor in school assignment to create or maintain integrated schools that prepare students for effective citizenship in our pluralistic society.

A. Interracial harmony and mutual respect are essential to the proper functioning of our democracy.

As this Court has often noted, irrational prejudice and stereotypes distort the proper functioning of our democratic system. Ensuring fair participation by minority groups is a matter of constitutional concern not simply because a minority group, by definition, lacks majority power. *Cf. Georgia v. Ashcroft*, 539 U.S. 461, 481 (2003) ("'minority voters are not immune from the obligation to pull, haul, and trade to find common political ground'" (citation omitted)). Rather, it is because "*prejudice* . . . tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities." *United States v. Carolene Prods. Co.*, 304 U.S. 144, 152 n.4 (1938) (emphasis added). Over many years, in a variety of contexts, this Court has made clear that animus, bias, and stereotypes have no place in the proper working of democracy. *See Romer v. Evans*, 517 U.S. 620, 634-35 (1996); *Miller v. Johnson*, 515 U.S. 900, 911-12 (1995); *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984). "If our society

is to continue to progress as a multiracial democracy, it must recognize that the automatic invocation of race stereotypes retards that progress and causes continued hurt and injury." *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 630-31 (1991).

This backdrop of constitutional principle underscores the imperative of providing our young people with opportunities to learn and work across racial lines. Public schools are uniquely important in this regard, for they are "the most powerful agency for promoting cohesion among a heterogeneous democratic people." *McCollum v. Bd. of Educ.*, 333 U.S. 203, 216 (1948). Not only do public schools serve as "a principal instrument in awakening the child to cultural values," *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954), but the values they transmit are sanctioned by the state. For more than a century after the Nation ratified the promise of equal citizenship, many states and local communities used public schools to perpetuate notions of racial inferiority. California is no stranger to this history.[6] Given this regrettable past, it should now be cause for approbation, not reproach, that some communities voluntarily seek to promote tolerance and equal citizenship by creating integrated schools.

In public schools no less than in selective universities, the educational and social benefits of racially integrated schooling "are not theoretical but real." *Grutter*, 539 U.S. at 330. Ample research confirms that interracial contact can reduce prejudice and stereotypes and improve race relations.[7] This is especially true when interracial contact

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[6] *See, e.g., Diaz v. San Jose Unified Sch. Dist.*, 733 F.2d 660 (9th Cir. 1984) (en banc) (*de jure* Latino segregation); *Westminster Sch. Dist. v. Mendez*, 161 F.2d 774 (9th Cir. 1947) (same); *Spangler v. Pasadena City Bd. of Educ.*, 311 F. Supp. 501 (C.D. Cal. 1970) (*de jure* black segregation); *Ward v. Flood*, 48 Cal. 36 (1874) (same); *Wong Him v. Callahan*, 119 F. 381 (N.D. Cal. 1903) (*de jure* Chinese segregation).

[7] *See, e.g.*, Christopher Ellison & Daniel A. Powers, *The Contact Hypothesis and Racial Attitudes Among Black Americans*, 75 SOC. SCI. Q. 385 (1994); Mary R. Jackman & Marie Crane, "*Some of my best*

occurs early in life because "[t]he early school years are crucial for the formation of the child's own racial identity as well as an understanding of prejudice and fairness."[8] Indeed, greater interracial contact in school is associated with increased racial tolerance and friendship for both white and minority children,[9] especially when schools engage students in cooperative learning.[10]

The habits of racial tolerance that children develop in integrated schools enhance their likelihood of living integrated lives as adults. Black students who attend schools with higher white enrollment are more likely to enroll in majority-white colleges, to work in mixed-race settings, to live in integrated neighborhoods, and to have white friends.[11] Similarly, white and Latino students who

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friends are black . . . ": Interracial Friendship and Whites' Racial Attitudes, 50 PUB. OPINION Q. 459 (1986).

[8] Susanne E. Dutton et al., *Racial Identity of Children in Integrated, Predominantly White, and Black Schools*, 138 J. SOC. PSYCHOL. 41, 42 (1998).

[9] *See* Dutton et al., *supra*, at 48; Richard R. Scott & James M. McPartland, *Desegregation as National Policy: Correlates of Racial Attitudes*, 19 AM. EDUC. RES. J. 397, 412-13 (1982); Charles S. Bullock III, *Contact Theory and Racial Tolerance Among High School Students*, 86 SCH. REV. 187, 210-13 (1978).

[10] *See* Robert E. Slavin, *Cooperative Learning: Applying Contact Theory in Desegregated Schools*, 41 J. SOC. ISSUES 45, 59 (1985) (concluding based on a review of nineteen studies that "when students work in ethnically mixed cooperative learning groups, they gain in cross-ethnic friendships"). Of course, the assignment of students to racially diverse schools does not by itself guarantee positive outcomes. But teachers and school officials can play important roles in structuring the pedagogical conditions that foster diversity's educational benefits. *See* Janet Ward Schofield, *Fostering Positive Intergroup Relations in Schools*, *in* HANDBOOK OF RESEARCH ON MULTICULTURAL EDUCATION 799, 802-08 (James A. Banks & Cherry A. McGee Banks eds., 2004).

[11] *See* Marvin P. Dawkins & Jomills Henry Braddock II, *The Continuing Significance of Desegregation: School Racial Composition and African American Inclusion in American Society*, 63 J. NEGRO EDUC. 394 (1994); Amy Stuart Wells & Robert L. Crain, *Perpetuation Theory and the Long-Term Effects of School Desegregation*, 64 REV. EDUC. RES. 531 (1994).

attend more integrated schools are more likely to work in mixed-race environments,[12] and they are more inclined to live in diverse neighborhoods, to have friends of other races, and to work to improve race relations.[13] Among college freshmen of all races, the most significant determinant of perceived social distance from other races is the degree of segregation in the schools they attended while growing up.[14]

The patterns of interaction fostered by integrated schools strengthen our diverse democracy. Racially integrated workplaces are often important sites of cooperation, trust, and communication. *See* CYNTHIA ESTLUND, WORKING TOGETHER: HOW WORKPLACE BONDS STRENGTHEN A DIVERSE DEMOCRACY 69-76, 105-24 (2003). The same is true of voluntary associations. *See* 2 ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 117 (Phillips Bradley ed., Knopf 1954) (1835). Networks that "encompass people across diverse social cleavages" build the social capital necessary "[to solve] our biggest collective problems." ROBERT D. PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY 22, 363 (2000). If we

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[12] *See* William T. Trent, *Outcomes of School Desegregation: Findings from Longitudinal Research*, 66 J. NEGRO EDUC. 255, 256-57 (1997); Marvin P. Dawkins et al., *Why Desegregate? The Effect of School Desegregation on Adult Occupational Desegregation of African Americans, Whites, and Hispanics*, 31 INT'L J. CONTEMP. SOC. 273, 279-80 (1994).

[13] *See* 1 U.S. COMM'N ON CIVIL RIGHTS, RACIAL ISOLATION IN THE PUBLIC SCHOOLS 110-13 (1967); 2 *id.* at 211-41; Michal Kurlaender & John T. Yun, *Fifty Years After* Brown: *New Evidence of the Impact of School Racial Composition on Student Outcomes*, 6 INT'L J. EDUC. POL'Y, RES. & PRACTICE 51, 58, 62-63 (2005); *cf.* Patricia Gurin et al., *Diversity and Higher Education: Theory and Impact on Educational Outcomes*, 72 HARV. EDUC. REV. 330, 353 (2002) (interracial contact in college is positively associated with citizenship engagement and racial/cultural engagement for Asian, black, Latino, and white students).

[14] *See* DOUGLAS S. MASSEY ET AL., THE SOURCE OF THE RIVER: THE SOCIAL ORIGINS OF FRESHMEN AT AMERICA'S SELECTIVE COLLEGES AND UNIVERSITIES 171-74 (2003).

hope for a society where race is not a barrier to political cooperation and mutuality, *see Georgia v. Ashcroft*, 539 U.S. at 481, 490-91, then few imperatives can be more compelling than creating racially integrated schools.

B. California public schools are highly segregated, depriving students of critical opportunities to develop interracial understanding and mutual respect.

Given the societal importance of integrated schools, it is troubling that California, which educates one of every eight children in the United States, has many of the most segregated schools in the Nation. In 2003-04, California's public school enrollment was 11% Asian, 8% black, 47% Latino, and 33% white. Yet "California is now a national leader in isolation for both blacks and Latinos." GARY ORFIELD & CHUNGMEI LEE, RACIAL TRANSFORMATION AND THE CHANGING NATURE OF SEGREGATION 26 (2006). Forty-seven percent of Latinos and 38% of blacks attended intensely segregated schools with 90% to 100% minority enrollment in 2003-04. *See id.* at 28 tbl.12. Nearly one-fourth of California public schools have 80% or higher single-race enrollments; indeed, 36% of Latino students attend schools with 80% or greater Latino enrollment.[15]

White students, too, are highly segregated. "Although Whites are a minority in every region of the State except the northernmost counties, Whites in every region are concentrated in schools with majority-white populations." JEANNIE OAKES ET AL., SEPARATE AND UNEQUAL 50 YEARS AFTER *BROWN*: CALIFORNIA'S RACIAL "OPPORTUNITY GAP" 2 (2004). Whites comprise only one-third of California's student population, but nearly two-thirds of whites attend majority-white schools. *See id.* at 15. Thus, most white

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[15] These data are tabulated from the California Department of Education, California Basic Educational Data System, Enrollment by Ethnic Group and School 2004-05, http://www.cde.ca.gov/ds/sd/cb/filesethsch.asp.

students in California are educated in a demographic context that does not resemble the majority-minority society where they will live and work.

Moreover, only 34% of white students and 26% of Latinos, compared to 55% of Asians and 55% of blacks, attend a "multiracial" school, defined as a school where each of three or more racial groups has at least 10% enrollment. *See* ORFIELD & LEE, *supra*, at 15 n.26, 21 tbl.9. In sum, too few students have regular opportunities to develop the understanding and mutual respect that a strong multiracial democracy requires.

C. The limited use of race in student assignment is necessary to create and maintain racially diverse schools.

Housing segregation plays a key role in structuring school segregation. Nevertheless, California school districts have "the authority to maintain appropriate racial and ethnic balances among their respective schools at the school districts' discretion or as specified in applicable court-ordered or voluntary desegregation plans." Cal. Educ. Code § 35160.5(b)(2)(A). Where districts have exercised this authority, experience shows that the limited use of race in student assignment is necessary to create and maintain racially diverse schools.

Perhaps the most instructive example is the desegregation and resegregation of San Francisco Unified School District under a consent decree from 1983 to 2005. *See San Francisco NAACP v. San Francisco Unified Sch. Dist.*, 413 F. Supp. 2d 1051, 1052-63 (N.D. Cal. 2005) (reviewing litigation history). The consent decree was adopted at a time when single-race enrollment exceeded 50% at two-thirds of the district's elementary schools, even though the largest racial group (whites) made up only 34% of total enrollment. *See id.* at 1053 ("There were 29 white schools, 23 black schools, four Hispanic schools and seven Chinese schools [in 1970]."). The 1983 decree sought to eliminate this pattern by limiting the concentration of any racial group at a given school. From 1983 to 1997, "this goal was

realized." *Id.* at 1055. "At the apex of integration [in 1997-98], . . . only one school [out of 122 in the district] enrolled more than fifty percent of a single race/ethnicity." *Id.*

In 1999, however, as a result of a lawsuit challenging the limits on single-race school enrollment, the 1983 decree was modified to eliminate race as a factor in student assignment. *See id.* at 1055-58. In 2001, the district introduced a parental choice system that assigned students based in part on "a 'diversity index' taking into account socioeconomic status, academic achievement, English-language learner status, mother's educational background, academic performance at the student's prior school, home language and geographic areas." *Id.* at 1058. The consequences of this race-neutral assignment method were swift and dramatic: While less than 1% of schools had a single-race enrollment exceeding 50% in 1997-98, "[s]ix years later, this number has climbed back up to 35 percent," and "over one in three San Francisco public schools is resegregated." *Id.* at 1059. In a district with 43% Asian, 14% black, 22% Latino, and 9% white enrollment, forty-three schools had a single-race enrollment of 60% or higher at one or more grade levels in 2004-05. *See id.* at 1059, 1069. In November 2005, U.S. District Judge William Alsup terminated the consent decree, concluding that "[t]he current student-assignment system based on the diversity index . . . has in fact allowed, if not caused, resegregation of the school district." *Id.* at 1071.[16]

Although the diversity index applies only to schools that are oversubscribed, it is clear that the index, even if applied to all schools, would result in substantial resegregation. The reason is that the socioeconomic diversity generated by the index has limited congruence with racial diversity. Thus, many schools deemed highly "diverse" by the diversity index are among the most severely resegregated by

[16] The index, though no longer compelled by decree, remains in effect as the school board examines other options, including the limited use of race, to achieve integrated schools. *See* Jill Tucker, *City School Assignment Plan Stuck*, S.F. CHRON., Aug. 22, 2006, at B1.

race. In 2003, the state-appointed consent decree monitor reported that "for a very large percentage of the most severely resegregating incoming classes, the diversity index shows that the schools are projected to be among the most diverse, and yet the racial/ethnic enrollments show that the schools are projected to be among the least diverse with regard to race." Report No. 20 of Consent Decree Monitoring Team 2002-2003, at 33, *San Francisco NAACP v. San Francisco Unified Sch. Dist.*, No. C78-1445-WHA (N.D. Cal. July 31, 2003).

School assignment policies based on socioeconomic diversity are unlikely to achieve substantial racial diversity not only in San Francisco but in urban districts throughout California and the Nation. *See* Sean F. Reardon et al., *Implications of Income-Based School Assignment Policies for Racial School Segregation*, 28 EDUC. EVAL. & POL'Y ANALYSIS 49 (2006). The reason is twofold. First, race and poverty are only loosely correlated; in a given district, many whites are poor while many minorities are not. *See id.* at 57-58 & fig.1. Second, the vast majority of U.S. cities with high residential segregation by race have relatively lower within-race residential segregation by income. *See id.* at 64 & fig.5.[17] Assuming a general preference for neighborhood schools, these facts mean that income-based diversity policies will most likely produce school assignment patterns that mirror residential patterns of racial segregation. *See id.* at 64-66. In other words, a policy of socioeconomic integration that

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[17] Among 228 major U.S. cities with at least 5% black population, the average level of black-white residential segregation in 2000 was nearly three times the average level of within-race segregation by income. *See* Reardon et al., *supra*, at 64. This finding confirms other research. *Compare* John R. Logan et al., *Segregation of Minorities in the Metropolis*, 41 DEMOGRAPHY 1, 6-7 (2004) (measuring residential segregation by race using index of dissimilarity) *with* Douglas S. Massey & Mary J. Fischer, *The Geography of Inequality in the United States, 1950-2000*, *in* BROOKINGS-WHARTON PAPERS ON URBAN AFFAIRS 1, 6-13 (2003) (measuring within-race segregation by income using index of dissimilarity).

ignores race will tend to mix poor children with nonpoor children *within racially segregated neighborhoods*. The resulting schools will be socioeconomically diverse *within* racial groups but still segregated *across* racial groups.[18]

The resegregation of the San Francisco school district stands in contrast to the stable integration achieved by the limited use of race in Berkeley Unified School District. For four decades, Berkeley Unified has sought to enroll in each school a mix of children from the mostly white eastern hillside and the mostly black and Latino western flatlands. Under a controlled choice plan in effect from 1995 to 2003 and upheld under the state constitution, *see Avila v. Berkeley Unified Sch. Dist.*, No. RG03-110397, 2004 WL 793295 (Cal. Super. Ct. Apr. 6, 2004), the district assigned students to schools within three demographically diverse attendance zones. In each zone, parents' choices were considered in light of space availability, school of previous attendance, sibling enrollment, and the student's residence, socioeconomic status, and race. For each school, the district sought, but did not mandate, an enrollment of each major racial group within five percentage points of its citywide share. In 2004, the district adopted a new choice plan that computes a composite diversity score for each student based on the household income, parental educational level, and racial composition of the student's immediate neighborhood. The plan combines parents' choices with sibling priority and the diversity scores to produce schools with a socioeconomic and racial composition within five to ten percentage points of the attendance zone demographics.[19]

The use of race as one of many factors in school assignment has helped to maintain racially integrated

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[18] *Amici* agree that socioeconomic integration has independent social and educational value. *See infra* note 26 and accompanying text. But it is no substitute for the role of racial integration in combating racial prejudice and racial stereotypes.

[19] *See* Berkeley Unified School District, BUSD Student Assignment Plan/Policy, http://www.berkeley.k12.ca.us/student_assign.html.

schools throughout Berkeley. In 2005-06, the district's student population was 7% Asian, 31% black, 17% Latino, and 29% white.[20] At nine out of fifteen elementary and middle schools, where almost two-thirds of all students were enrolled, three or all four major racial groups had enrollments within five percentage points of their districtwide shares.[21] Out of sixteen schools in the district, only one had a single-race enrollment exceeding 40%. The controlled choice system has achieved a similar pattern of school integration for each of the past five years. Developed with broad community support, the Berkeley policy offers a model of "a race-conscious school assignment plan that seeks to provide all students with the same benefit of desegregated schools." *Avila*, 2004 WL 793295, at *3.

D. The experiences of other nations confirm the importance of integrated education to strengthening the stability and cohesion of a diverse democracy.

Diverse communities in the United States are not alone in seeking to create integrated schools where children learn to transcend lines of social division. In Northern Ireland, the government in 1989 established a statutory framework to facilitate the voluntary development of integrated schools enrolling Protestant and Catholic schoolchildren. *See* The Education Reform (Northern Ireland) Order, 1989, SI 1989/2406 (N. Ir. 20), pt. VI; Seamus Dunn, *Integrated Schools in Northern Ireland*, 15 OXFORD REV. EDUC. 121 (1989). Under this framework, parents in fifty-six communities throughout Northern Ireland have voted to establish publicly funded

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[20] The data in this paragraph are available from the California Department of Education at http://data1.cde.ca.gov/dataquest/ [hereinafter CDE DataQuest].

[21] Because Berkeley Unified has only one high school, the school assignment policy does not apply there. In 2005-06, the racial composition of Berkeley High – 7% Asian, 31% black, 12% Latino, 35% white – was representative of the district. *See id.*

integrated schools with enrollment targets for religious balance. *See* TONY GALLAGHER ET AL., INTEGRATED EDUCATION IN NORTHERN IRELAND: PARTICIPATION, PROFILE AND PERFORMANCE 2 (2003).[22]

"Research appears to overwhelmingly support a positive effect of integrated education [in Northern Ireland] on sectarian attitudes." Claire McGlynn et al., *Moving Out of Conflict: The Contribution of Integrated Schools in Northern Ireland to Identity, Attitudes, Forgiveness and Reconciliation*, 1 J. PEACE EDUC. 147, 157 (2004) (reviewing empirical literature). Integrated schools promote intergroup contact, leading to more positive attitudes toward other groups, higher rates of cross-community friendships, and a greater willingness to live and work in mixed settings. *See* COLIN IRWIN, EDUCATION AND THE DEVELOPMENT OF SOCIAL INTEGRATION IN DIVIDED SOCIETIES 41-66 (1991); Carol McClenahan et al., *Intergroup Friendships: Integrated and Desegregated Schools in Northern Ireland*, 136 J. SOC. PSYCHOL. 549 (1996); Dirk Schubotz & Gillian Robinson, *Cross-Community Integration and Mixing: Does It Make a Difference?*, RES. UPDATE (N. Ir. Soc. & Pol. Archive), Apr. 2006. The impact of schooling relative to parental influence in shaping attitudes toward other groups is especially significant for students attending integrated schools. *See* McGlynn et al., *supra*, at 155; Schubotz & Robinson, *supra*, at 2.

Similar efforts are found in Israel, where integration of Western and Middle Eastern children[23] in public schools has created opportunities for interethnic contact and thereby cultivated more tolerant attitudes. *See* Aharon

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[22] Updated data are available from the Department of Education of Northern Ireland, Integrated Schools, http://www.deni.gov.uk/index/85-schools/10-types_of_school-nischools_pg/16-schools-integratedschools_pg.htm.

[23] Western children are those whose families immigrated to Israel from Europe, North and South America, Australia, and South Africa. Middle Eastern children are those whose families come from countries such as Egypt, Iraq, Iran, Syria, Yemen, Morocco, and Tunis.

Bizman & Yehuda Amir, *Integration and Attitudes*, *in* SCHOOL DESEGREGATION: CROSS-CULTURAL PERSPECTIVES 155, 168 (Yehuda Amir & Shlomo Sharan eds., 1984) (reviewing empirical literature and concluding that "in Israeli schools the very fact of integration creates greater willingness on the part of both groups to live together and maintain various kinds of interaction"). Even in South Africa, where the fresh legacy of apartheid has perpetuated racial conflict in public education, there are signs that integrated schools, with appropriate democratizing reforms, are helping to foster interracial communication, tolerance, and understanding. *See* Clive Harber, *Desegregation, Racial Conflict and Education for Democracy in the New South Africa: A Case Study of Institutional Change*, 44 INT'L REV. EDUC. 569, 572-80 (1998).

Of course, the origins and severity of social conflict differ from one society to the next. But the basic societal challenge of building cohesion and mutual respect is largely the same. Our Nation offers the world the example of a constitutional tradition that deeply values the eradication of racial prejudice and stereotypes. Progress toward this goal is critically dependent on the education our children receive in the public schools. So long as education remains "the very foundation of good citizenship," *Brown*, 347 U.S. at 493, local communities must have effective policy options, including the limited use of race in school assignment, to create racially integrated schools that prepare students to live together in our increasingly diverse democracy.

II. INTEGRATED PUBLIC SCHOOLS ENHANCE MINORITY ACCESS TO HIGHER EDUCATION AND CULTIVATE DIVERSE LEADERS FOR OUR DIVERSE DEMOCRACY.

Three years ago, this Court affirmed the compelling importance of educating a racially diverse group of leaders for our increasingly heterogeneous society. *See Grutter*, 539 U.S. at 332. Like the university in *Grutter*, UC aims to provide a "training ground for . . . our Nation's leaders"

that is "inclusive of talented and qualified individuals of every race and ethnicity." *Id.*[24]

University admission policies play a critical role in cultivating diverse leaders for the Nation. However, since 1996, state law has barred UC from using race-conscious affirmative action. *See* Cal. Const. art. I, § 31. This prohibition has underscored the reality that UC cannot enroll a student body that truly reflects California's racial diversity without serious efforts to level the playing field in K-12 education.[25] The assertion that "[f]or the last ten years, California school districts have been providing equal educational opportunities to all its K-12 public school students," Br. of *Amicus Curiae* Pacific Legal Foundation at 26, is simply false. As discussed below, black and Latino students throughout California are disproportionately concentrated in racially segregated, inferior schools. As a result, they are far less likely to attend UC than their white and Asian peers. By reducing the racial isolation of black and Latino students, voluntary integration plans enhance college access and further the compelling interest in educating diverse leaders for our diverse democracy.

A. UC's commitment to excellence and diversity cannot be sustained without improved K-12 education for underrepresented minority students.

Since its founding in 1868, the University has dedicated itself to both excellence and diversity. The state law

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[24] The University's undergraduate alumni include Chief Justice of the United States Earl Warren, U.S. Circuit Judge Alex Kozinski, U.S. District Judge Thelton Henderson, U.S. Senator Ted Stevens, U.S. Representative Bob Matsui, U.S. Attorney General William French Smith, Michigan Governor Jennifer Granholm, Los Angeles Mayor Antonio Villaraigosa, economist Michael Boskin, architect Julia Morgan, businessmen Richard Blum and Walter Haas, chef Alice Waters, and Nobel laureates Ralph Bunche and William Sharpe, among many others.

[25] In 2005, over 95% of all UC freshmen, 98% of black freshmen, and over 99% of Latino freshmen came from California high schools.

establishing UC sought to benefit "any scholar in the public schools of the State who shall distinguish himself in study" and instructed the Board of Regents "to so apportion the representation of students, when necessary, that all portions of the State shall enjoy equal privilege therein." An Act to Create and Organize the University of California, ch. 244, §§ 10, 14, 1868 Cal. Stat. 251, 254. In setting current policy for undergraduate admissions, the Regents have unanimously declared that "the University shall seek out and enroll, on each of its campuses, a student body that demonstrates high academic achievement or exceptional personal talent, and that encompasses the broad diversity of backgrounds characteristic of California." Regents of Univ. of Cal., Policy on Future Admissions, Employment, and Contracting; Resolution Rescinding SP-1 and SP-2 (2001).

To a large degree, the University has successfully implemented this policy. Admission to UC requires a strong academic record, typically evidenced by completion of rigorous coursework, high school grades, and test scores. Over time, admission has become increasingly competitive. For example, UC Berkeley admitted only one in five applicants in 2006, with average grades and test scores among admitted students in the top tenth percentile nationally. At the same time, over one-fourth of UC Berkeley's 23,000 undergraduates are the first in their families to attend college, and nearly one-third come from families earning $35,000 a year or less. In fact, UC Berkeley enrolls more low-income students who are eligible for federal Pell Grants than all Ivy League schools combined.[26]

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[26] The same is true of UCLA. In 2003-04, UC Berkeley had 7,840 Pell Grant recipients, UCLA had 9,686, and the eight Ivy League schools had 7,454 combined. The number and percentage of Pell recipients for each school are as follows: Brown (697, 12%), Columbia (1,122, 16%), Cornell (2,340, 17%), Dartmouth (535, 13%), Harvard (693, 7%), Princeton (349, 7%), Penn (1,174, 10%), Yale (544, 10%), UC Berkeley (7,840, 34%), and UCLA (9,686, 38%). *See* Institute for College Access and Success, Economic Diversity of Colleges Comparison Tool, http://www.economicdiversity.org/tool.php.

However, UC's enrollment has not kept pace with the state's changing diversity. In 2005-06, 8% of students in California public high schools were black and 43% were Latino, but only 3% of UC undergraduates were black and 14% were Latino. Given the state ban on race-conscious affirmative action, this underrepresentation of black and Latino students fundamentally reflects the unequal quality of K-12 education afforded to our schoolchildren. Among California public high school graduates, 16.2% of whites and 31.4% of Asians – but only 6.2% of blacks and 6.5% of Latinos – met UC eligibility requirements in 2003. *See* CAL. POSTSECONDARY EDUC. COMM'N, UNIVERSITY ELIGIBILITY STUDY FOR THE CLASS OF 2003, at 6 (2004). In fact, these data understate the problem, since UC eligibility rates do not take into account the massive racial disparities in rates of high school graduation. *See* HARV. CIVIL RIGHTS PROJECT, CONFRONTING THE GRADUATION RATE CRISIS IN CALIFORNIA (2005). As discussed below, these disparities stem in large part from the disproportionate concentration of black and Latino children in racially segregated and inferior schools.

B. Black and Latino students who attend segregated schools have diminished access to UC.

Part I.B, *supra*, described the racial isolation of black and Latino students in California public schools. Table 1 shows this pattern of isolation in various high schools throughout the state.[27] In Elk Grove Unified School District in Sacramento County, for example, the 2005-06 student population was 50% white and Asian and 41% black and Latino. Yet enrollment at Elk Grove High School was 71% white and Asian and 23% black and Latino, while Valley High School, a few miles away, was 29% white and Asian and 62% black and Latino. Similarly, in Long Beach Unified School District in Los Angeles County, the student

[27] The data in Table 1 are from CDE DataQuest, *supra*.

Table 1. Percent Enrollment by Race/Ethnicity, 2005-06

	White	Asian	Black	Latino
Elk Grove Unified (Sacramento County)	30.2	19.5	20.0	21.0
Elk Grove High	61.5	9.0	7.9	15.0
Valley High	7.2	22.1	35.2	26.7
Long Beach Unified (Los Angeles County)	16.9	8.9	18.1	50.1
Wilson High	33.2	11.7	15.4	36.4
Cabrillo High	2.7	2.5	21.5	61.8
Jordan High	3.5	6.8	27.5	55.0
San Diego Unified	25.6	8.7	13.9	43.5
La Jolla High	62.0	10.6	2.1	23.8
Gompers Secondary	1.4	8.6	26.0	61.1
Hoover High	3.3	13.2	14.9	67.3

body was 26% white and Asian and 68% black and Latino. Yet Wilson High was 45% white and Asian and 52% black and Latino, while Cabrillo High, on the other side of a freeway, was just 5% white and Asian and 83% black and Latino. Jordan High was also segregated, with 10% white and Asian and 83% black and Latino enrollment. Similar disparities are apparent in San Diego Unified School District.

The racial composition of public schools is strongly associated with the likelihood of gaining access to UC.[28] At majority-white La Jolla High in San Diego, for example, 50% of black graduates and 25% of Latino graduates in 2005 had completed the coursework required for UC eligibility, while only 17% of blacks and 11% of Latinos graduating from Gompers, and only 12% of blacks and 13% of Latinos from Hoover, had done so. Similarly, in Sacramento County, 49% of blacks and 65% of Latinos graduating from majority-white Elk Grove High, but only 15% of blacks and 10% of Latinos graduating from Valley High, had completed UC-required coursework. In Los

[28] The data in this paragraph are from CDE DataQuest, *supra*.

Angeles County, the UC coursework completion rate among Latinos was lower at Cabrillo High (8%) and Jordan High (14%), both majority-Latino schools, than at Wilson High (25%) where Latinos are less racially isolated.

The negative association between concentrated black and Latino enrollment and UC eligibility is confirmed by several statewide studies. A 2004 study found that black and Latino students in California who attend majority-white or majority-Asian public high schools have significantly higher rates of UC eligibility than their counterparts in majority-black or majority-Latino high schools. *See* Robert Teranishi et al., *Opportunity at the Crossroads: Racial Inequality, School Segregation, and Higher Education in California*, 106 TEACHERS C. REC. 2224, 2234 tbl.3 (2004). Among Latino high school graduates in 2000, only 0.5% who attended majority-Latino schools and 1.2% in majority-black schools had completed UC-required coursework and taken the SAT, compared to 4.5% of Latino graduates in majority-white schools and 13.4% of Latinos in majority-Asian schools. *Id.* Among black high school graduates, 0.6% in majority-black schools and 1.5% in majority-Latino schools had completed UC-required coursework and taken the SAT, compared to 3.7% in majority-white schools and 17.8% in majority-Asian schools. *Id.*

Similarly, a 2005 study of California public high schools found that the percentage of graduates admitted to UC is negatively correlated with the percentage of blacks and especially Latinos in the student body. *See* Isaac Martin et al., *High School Segregation and Access to the University of California*, 19 EDUC. POL'Y 308, 318, 319 tbl.3 (2005). For Latinos, racial isolation in high school is strongly associated with low rates of completion of UC-required courses and low rates of application to UC. *Id.* at 319-22. For blacks, racial isolation is associated with low rates of admission among those who apply. *Id.*

These unequal rates of college access based on high school racial composition are evident in UC's undergraduate population. In 2000, only 22% of Latinos and 34% of blacks attended majority-white high schools across the state. But 53% of black and Latino freshmen at UC San Diego, 49% at UC Berkeley, and over 40% throughout the UC system came from majority-white high schools.[29] Among the twenty-five public high schools with the highest rates of UC admission in 1999, fourteen were majority-white and seven were majority-Asian; only one had majority black and Latino enrollment. *See* Isaac Martin et al., *Unequal Opportunity: Student Access to the University of California*, *in* UNIV. OF CAL. INST. FOR LABOR AND EMPLOYMENT, THE STATE OF CALIFORNIA LABOR, 2003, at 119, 145 (2003).[30]

The negative relationship between black and Latino racial isolation and college access is partly due to socioeconomic differences between less segregated and more segregated schools. But neither student poverty nor school-level poverty fully accounts for variation in educational outcomes by school racial composition. Minority students in less segregated high schools have greater college access than their peers from similar socioeconomic backgrounds who attend more segregated schools.[31] And

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[29] *See* Robert Teranishi & Tara Parker, Social Reproduction of Inequality: The Composition of Feeder Schools to the University of California 12-13 (2006), *available at* http://www.law.berkeley.edu/centers/ewi/research/TeranishiParker2006_AERJ_v2.pdf.

[30] For the racial composition of the top 25 schools identified by Martin et al., see CDE DataQuest, *supra*. Racially integrated high schools also supply a substantial share of the black and Latino students who attend elite colleges nationally. A study of fall 1999 freshmen in 28 of the Nation's most selective colleges, including Yale, Stanford, Columbia, Princeton, and UC Berkeley, found that 78% of Latino freshmen and 64% of black freshmen came from high schools with less than 50% black or Latino enrollment. *See* MASSEY ET AL., *supra*, at 94 tbl.5.4.

[31] *See* Julie E. Kaufman & James E. Rosenbaum, *The Education and Employment of Low-Income Black Youth in White Suburbs*, 14 EDUC. EVAL. & POL'Y ANALYSIS 229, 235 (1992); Jomills Henry Braddock

attending a less segregated school is associated with higher achievement, even after controlling for the family background of individual students and socioeconomic composition of the school.[32] The benefit of attending a school with lower black enrollment is especially significant for *high-achieving* black students.[33] Thus, the negative effects of segregation on black students fall most heavily on those with the greatest chance of admission to selective universities like UC.

C. Black and Latino students in segregated schools have diminished access to UC because segregated schools provide inferior educational opportunities.

The disadvantages of attending a segregated school are well-documented. Most importantly, the least qualified teachers are disproportionately found in schools with the highest minority enrollment. In 2004-05, 20% of teachers in California schools with over 90% minority enrollment were underprepared (lacked a full credential for their teaching assignment) or were novice teachers (in their first or second year of teaching) compared to only 11% of teachers in schools with 30% or lower minority enrollment. *See* CAMILLE E. ESCH ET AL., TEACHING AND CALIFORNIA'S FUTURE: THE STATUS OF THE TEACHING PROFESSION 2005, at 70-71 (2005). In the 500 California schools where 20% or more teachers were underprepared, average black and

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II, *The Perpetuation of Segregation Across Levels of Education: A Behavioral Assessment of the Contact-Hypothesis*, 53 SOC. EDUC. 178, 183 (1980).

[32] *See* Eric A. Hanushek et al., New Evidence About *Brown v. Board of Education*: The Complex Effects of School Racial Composition on Achievement 14-15 (Oct. 2004), *available at* http://edpro.stanford.edu/hanushek/admin/pages/files/uploads/race.pdf; John F. Kain & Daniel M. O'Brien, Black Suburbanization in Texas Metropolitan Areas and Its Impact on Student Achievement 20-24 (Mar. 2000), *available at* http://www.utdallas.edu/research/tsp/pdfpapers/paper15.pdf.

[33] *See* Hanushek et al., *supra*, at 19-20, 24.

Latino enrollment was 74%, compared to 55% statewide. *Id.* at 63. The percentage of underprepared math and science teachers was four times greater in schools with over 90% minority enrollment (16%) than in schools with 30% or lower minority enrollment (4%). *Id.* at 74-76.

Table 2 shows the unequal levels of teaching experience in the public high schools listed in Table 1.[34] In Sacramento County, the average teacher at majority-white Elk Grove High had 4.5 more years of experience than the average teacher at Valley High, a predominantly black and Latino school. Novice teachers comprised only 6% of the staff at Elk Grove High, compared to 14% at Valley High. The same pattern is evident in Long Beach and San Diego. Given stable enrollments, these data show that teacher

Table 2. School Racial Composition and Teaching Experience, 2005-06

	% black or Latino	Average years of experience	% Novice teachers*
Elk Grove Unified (Sacramento County)			
Elk Grove High	22.9	15.4	5.8
Valley High	61.9	10.9	14.0
Long Beach Unified (Los Angeles County)			
Wilson High	51.8	14.7	7.2
Cabrillo High	83.3	10.6	14.9
Jordan High	82.5	12.9	12.3
San Diego Unified			
La Jolla High	25.9	17.7	6.0
Gompers Secondary	87.1	11.7	12.9
Hoover High	82.2	12.0	11.5

**Teachers in the first or second year of teaching*

[34] The data in Table 2 are from CDE DataQuest, *supra*.

turnover occurs at a much higher rate in heavily black and Latino schools, and that students in those schools are far more likely to be taught by inexperienced teachers. Because beginning teachers "perform significantly worse than more experienced teachers," Steven G. Rivkin et al., *Teachers, Schools, and Academic Achievement*, 73 ECONOMETRICA 417, 447 (2005), and because teacher turnover undermines school stability and effectiveness, *see* ESCH ET AL., *supra*, at 64, these disparities confirm the historical truth that racially segregated schools provide inferior opportunity.

Importantly, the maldistribution of experienced teachers is a function of school racial composition *independent* of other factors. Controlling for school poverty, teacher salaries, and other school and district characteristics, California teachers are more likely to transfer out of schools with higher black or Latino enrollment, and the odds that a newly hired teacher will be fully credentialed vary inversely with the proportion of blacks or Latinos in a school. *See* STEPHEN CARROLL ET AL., RAND, THE DISTRIBUTION OF TEACHERS AMONG CALIFORNIA'S SCHOOL DISTRICTS AND SCHOOLS 76, 114-15 (2000); *see also* Susanna Loeb et al., *How Teaching Conditions Predict Teacher Turnover in California Schools*, 80(3) PEABODY J. EDUC. 44, 61 tbl.5 (2005) (finding that majority black enrollment and majority black or Latino enrollment are significant predictors – net of school poverty, salaries, and working conditions – of California teachers reporting that turnover is a serious problem in their school).

Similarly, a 2004 study of Texas teachers found that higher teacher turnover is significantly correlated with higher black or Latino school enrollment after controlling for salaries, student test scores, and school poverty. *See* Eric A. Hanushek et al., *Why Public Schools Lose Teachers*, 39 J. HUM. RESOURCES 326, 343-50 (2004).[35] In addition, the

[35] Black and Latino teachers are an exception to this pattern; higher black and Latino enrollments tend to reduce turnover among black and Latino teachers, respectively. *See* Hanushek et al., *supra*, at 343, 345, 347.

study found "little evidence of an independent effect" of school poverty on teacher turnover when minority enrollment and other factors are taken into account. *Id.* at 343. A 2005 study of Georgia teachers likewise found that teachers are much more likely to leave schools with high black enrollment and, further, that high poverty and low test scores do not predict higher teacher turnover once black enrollment is taken into account. *See* Benjamin Scafidi et al., Race, Poverty, and Teacher Mobility 14-16 (2005), *available at* http://ssrn.com/abstract=902032. Consistent with the Texas study, the Georgia study concluded that, while "teachers are much more likely to leave high poverty schools," this "occurs because teachers are more likely to leave a particular type of poor school – one that has a large proportion of minority students." *Id.* at 16.

In sum, the *racial* make-up of a school – apart from other characteristics, including its socioeconomic composition – is a crucial determinant of student access to the most important educational resource that schools can provide: good teachers.[36]

The lack of high-quality teachers in racially segregated schools is compounded by serious shortcomings in curriculum and supports necessary for college access. A recent study of California high schools examined three "roadblocks to college": (a) more students per counselor than the national average, (b) more students per teacher than the national average, along with inadequate training of teachers in college prep courses, and (c) shortage of college prep courses in the curriculum. *See* JOHN ROGERS ET AL., CALIFORNIA EDUCATIONAL OPPORTUNITY REPORT 2006: ROADBLOCKS TO COLLEGE 6, 15-17 (2006). Whereas 24% of high schools with over 90% minority enrollment

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[36] Although many states and districts offer monetary or other inducements to encourage teachers to work in high-minority schools, there is "little evidence that using financial incentives to entice teachers to certain jobs actually reduces turnover or raises student achievement." Linda Jacobson, *Teacher-Pay Incentives Popular But Unproven*, EDUC. WK., Sept. 27, 2006, at 1.

had all three roadblocks to college in 2004-05, only 6% of majority-white high schools had the same combination of problems. *Id.* at 9.

Teachers not only provide instruction but also set expectations and shape the school culture. Thus minority students in more integrated schools attend college at higher rates as a result of higher standards, more rigorous curriculum, and better counseling. *See* AMY STUART WELLS & ROBERT L. CRAIN, STEPPING OVER THE COLOR LINE: AFRICAN-AMERICAN STUDENTS IN WHITE SUBURBAN SCHOOLS 198-205 (1997) (describing college-going expectations set by teachers and counselors in majority-white schools); Kaufman & Rosenbaum, *supra*, at 237-38 (describing individualized instruction and college counseling that teachers provide in majority-white schools).

Moreover, racially integrated schools tend to have social environments that reinforce teachers' high expectations. Students in high schools with greater white enrollment are more likely to have a strong interest in attending college, even after controlling for school poverty. *See* John T. Yun & Michal Kurlaender, *School Racial Composition and Student Educational Aspirations: A Question of Equity in a Multiracial Society*, 9 J. EDUC. STUDENTS PLACED AT RISK 143, 155 (2004). Such aspirations exert positive peer pressure and "se[t] a 'school climate' more favorable to achievement." Robert L. Crain, *School Integration and the Academic Achievement of Negroes*, 44 SOC. EDUC. 1, 17 (1971). Racially integrated schools also provide minority students with crucial access to information networks that facilitate upward mobility. *See* Wells & Crain, *supra*, at 534 ("Desegregated schools may be the only institutions in which African-American and Latino students would have access to the abundance of college and employment contacts that white and wealthy students often take for granted[.]").

In addition, black and Latino students in more racially diverse California schools report less bullying and greater safety. *See* Jaana Juvonen et al., *Ethnic Diversity and Perceptions of Safety in Urban Middle Schools*, 17 PSYCHOL. SCI. 393 (2006). Similarly, black and Latino

college freshmen from racially integrated high schools report less violence, drug use, and disorder in their high schools than their peers who attended segregated high schools. *See* MASSEY ET AL., *supra*, at 95 tbl.5.5.

The problems facing racially isolated black or Latino schools are multifaceted, with no single answer. In recent years, California has sought to improve such schools through a rigorous accountability system and funding for after-school programs, school safety initiatives, and recruitment and retention of qualified teachers. In 2005-06, UC itself engaged in K-12 support activities totaling $29 million, including professional development for teachers, partnerships with underserved schools, and college prep programs for low-income students.[37]

But none of these efforts, alone or in combination, purports to fully level the playing field. The fact remains that racially integrated schools offer a school climate where good teachers set high standards and encourage educational success, while segregated schools with high black or Latino enrollment often lack these basic features. The answer to this problem is a subject of ongoing debate, innovation, and educational judgment. Although some interventions have worked in some places, there is no definitive list of race-neutral policies known to provide a complete solution. Local communities must have latitude to pursue thoughtful strategies, including race-conscious school assignment, that work to narrow the disparities in our current system.

CONCLUSION

If selective institutions of higher education are to be accessible to individuals of all races and ethnicities, then public schools need a broad range of effective policy options, including voluntary integration, for enhancing the

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[37] *See* UNIV. OF CAL. OFFICE OF THE PRESIDENT, 2006-07 BUDGET FOR CURRENT OPERATIONS 178-92 (2005), *available at* http://budget.ucop.edu/rbudget/200607/200607-budgetforcurrentoperations.pdf.

educational opportunities afforded to minority students. And if California and the Nation are to build the social harmony and mutual respect that are central to our constitutional tradition, then voluntary efforts to create racially integrated public schools should be hailed as an affirmation, not a violation, of constitutional principle. In our increasingly diverse society, there are few imperatives more compelling than the cultivation of tolerance, trust, and mutual understanding among our young people. Local communities, exercising sound educational judgment, must have the latitude to achieve this goal. Accordingly, *Amici* respectfully urge this Court to affirm the judgments below.

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